

1 Diane Weifenbach, Esq. (SBN 162053)
2 LAW OFFICES OF DIANE WEIFENBACH
3 5120 E. LaPalma, Suite 209
4 Anaheim, CA 92807
5 Ph: (714) 695-6637
6 Email: diane@attylsi.com

7 Attorney for Secured Creditor U.S. BANK NATIONAL ASSOCIATION AS
8 LEGAL TITLE TRUSTEE FOR TRUMAN 2016 SC6 TITLE TRUST

9 UNITED STATES BANKRUPTCY COURT

10 NORTHERN DISTRICT OF CALIFORNIA (OAKLAND)

11 In Re:) CASE NO. : 18-42193
12)
13 LAUREN M. MASSA-LOCHRIDGE,,) CHAPTER 13
14)
15 DEBTOR.) **OBJECTION TO CONFIRMATION**
16) **OF AMENDED CHAPTER 13**
17) **PLAN AND REQUEST FOR**
18) **HEARING**
19) Confirmation Hearing
20) Date: January 15, 2019
21) Time: 1:30 p.m.

22 **COMES NOW**, Secured Creditor U.S. BANK NATIONAL ASSOCIATION AS
23 LEGAL TITLE TRUSTEE FOR TRUMAN 2016 SC6 TITLE TRUST (“Creditor”), as
24 successor in interest to the claim of Secured Creditor WELLS FARGO BANK with regard to
25 the lien encumbering Debtor’s real property located at 1601 Beverly Place, Berkeley, CA and
26 objects to confirmation of Debtor’s Amended Chapter 13 Plan filed October 31, 2018 as
27 follows:

28 **I. STATEMENT OF FACTS**

1 Creditor is the current holder of a Note and Deed of Trust Agreement executed by
2 LAUREN MASSA LOCHRIDGE (“Debtor”) DATED June 28, 2002 in the principal sum of
3 \$476,250.00, having recently acquired the Note and Deed of Trust from WELLS FARGO
4 BANK (“WFB”).

5 **1 OBJECTION TO CONFIRMATION OF AMENDED CHAPTER 13 PLAN**

1 2. The Note is secured by a Deed of Trust encumbering the real property located at
2 16011 Beverly Place, Berkeley, CA.

3 3. Creditor's predecessor, WFB time filed a Proof of Claim evidencing pre-petition
4 arrears of \$362,969.01, including delinquent mortgage payments from March 15, 2006 and a
5 total debt of \$821,920.17. Debtor's monthly mortgage payment is \$3,771.47 per month, which
6 is greater than Debtor's monthly gross income.

7
8 4. On October 26, 2018 WFB filed its Objection to Confirmation of Debtor's Plan.
9 (*Dock. #26*) citing Debtor's prior Bankruptcy filings,

10
11 5. On October 27, 2018 this Court entered its Order denying Debtor's Motion to
12 extend the automatic stay as to WFB, Creditor's predecessor in interest. (*Dock. #25*)

13 6. On October 28, 2018 WFB filed its Motion for Relief from Automatic Stay,
14 including a request for *in rem* relief due to the Debtor's numerous Bankruptcy filings, her
15 failure to make Plan payments in her serial Bankruptcy cases, her substantial pre-petition
16 default, and the denial of her loan modification request in her Third Bankruptcy case.

17
18 7. On November 20, 2018 the Trustee filed a Motion to Dismiss Case for Failure to
19 Make Plan Payments. (*Dckt. #47*)

20 8. As stated in the WFB Objection to confirmation (*Para. 10*), the Debtor participated
21 in the Court's MMM (mortgage modification program) in her Third Bankruptcy case, filed on
22 February 27, 2018, Case No. 18-40467-WJL. Debtor's request for a loan modification was
23 denied and her Third case was dismissed by Stipulation on September 11, 2018, after the
24 Trustee moved for dismissal for failure to make Plan payments.

25
26 9. Debtor then filed the within Fourth Bankruptcy case.

27
28 10. Debtor's Amended Chapter 13 Plan was filed on October 31, 2018 (*Dck. #33*)

1 That Plan provides for NO pre-petition arrears on account of Creditor's claim nor does it
2 provide for ongoing post-petition mortgage payments to Creditor.

3 11. The Plan also does not provide for surrender of Creditor's collateral.

4 12. Debtor's Schedule "I" reveals she receives \$3,600 per month gross income, which
5 is not sufficient to pay the mortgage payment, let along the mortgage and substantial Plan
6 payment.
7

8 13. Debtor's Plan cannot be confirmed unless and until Debtor provides for payment in
9 full of Creditor's claim and payment of the post-petition mortgage payments, which she cannot
10 do. In the alternative, Debtor's Plan must provide for a surrender of Creditor's collateral.

11 **II. OBJECTION**

12 Application of the provisions of *11 U.S.C. Section 1325* determines when a Plan shall be
13 confirmed by the Court. Based on the foregoing, as more fully detailed below, the Plan
14 cannot be confirmed as proposed because it violates numerous provisions of *Section 1325 and*
15 *Section 1326.*
16

17 **A. DEBTOR'S PLAN DOES NOT PROVIDE FOR THE PAYMENT IN FULL OF** 18 **THE PREPETITION ARREARS TO CREDITOR**

19 *11 U.S.C. Section 1325(a)(5)*

20 *Section 1325(a)(5)* requires that with respect to each secured claim, a proposed Chapter 13
21 Plan must provide that the value, as of the effective date of the plan, of property to be
22 distributed under the Plan on account of such claims is not less than the allowed amount of
23 such claim. Debtor's Plan cannot be confirmed.
24
25
26
27
28

1 **B. THE DEBTOR WILL NOT BE ABLE TO MAKE ALL PAYMENTS UNDER**

2 **THE PLAN**

3 *11 U.S.C. §1325(a)(6)*

4 *Section 1325(a)(6)* requires that a proposed Plan be feasible in such a form that “the
5 debtor will be able to make all payments under the plan and to comply with the plan.” Courts
6 have held that where a debtor does not have sufficient income to pay his reasonable expenses
7 and the proposed plan payment, the plan is not feasible as required by *Section 1325(a)(6)* and
8 confirmation must be denied.

9 The Debtor has the burden of proving that the Plan is feasible. (*In re Endicott*, 157 BR
10 255, 263 (Banker. W.D. Va. 1993)). Debtor’s Schedules reveal that her net disposable income
11 is not sufficient to make the required Plan payment

12 The Court must consider the Debtor’s current and future earning capacity; her future
13 disposable income, whether the Plan provides for payment of interest to this Creditor (which it
14 does not); and whether these payments will significantly reduce the debt. It is clear that the
15 proposed Plan does NOT even come close to reducing Creditor’s substantial debt as it provides
16 for no payments on account of Creditor’s secured claim. Debtor’s Plan violations the
17 Bankruptcy Code, is not feasible and cannot be confirmed.

18 **C. DEBTOR’S PLAN AND THIS CHAPTER 13 CASE WERE NOT FILED IN**
19 **GOOD FAITH**

20 *11 U.S.C. Section 1325(a)(3)*

21 *Section 1325(a)(3)* provides that the Court shall confirm a Plan if the Plan has been
22 proposed in good faith and not by any means forbidden by law. The Plan has not been filed in
23 good faith because, as is stated above, the Debtor has no ability to reorganize and pay her
24 substantial delinquent mortgage payments. This fact is borne out by the Debtor’s own
25 Bankruptcy Schedules. Debtor’s Plan does not provide for any post-petition or pre-petition
26 mortgage payments to Creditor. This case was filed solely for the purpose of staving off
27
28

1 Creditor's ultimate exercise of its state law rights and remedies pursuant to the Note and Deed
2 of Trust. This is not a Plan of Reorganization as there is no debt that is actually going to be
3 repaid. There is no legitimate intent or ability to reorganize and this Plan and this case were
4 filed in bad faith.

5 Courts construing the "good faith" requirement have generally coupled this standard to
6 the rehabilitative goals of Chapter 13, holding that it is necessary that the debtor show that its
7 filing presupposes a "valid reorganizational purpose", thereby requiring that there be some
8 showing of the need for rehabilitation, in order to justify the discharge that would be granted to
9 a good faith reorganized debtor.

10 The legitimate goal of a Chapter 13 is a distributive and reorganization purpose. The
11 Debtor has no such intention in this case, as is evidenced by her frivolous Plan. There is no
12 purpose for this Chapter 13 case. This Bankruptcy case was not filed in good faith and the
13 Plan was not proposed in good faith and cannot be confirmed.

14 WHEREFORE, Creditor objects to confirmation of the Plan and requests as follows:

- 15 1. The Plan be denied confirmation and the case be dismissed;
- 16 2. Debtor be barred from filing another case under the Bankruptcy Code;
- 17 3. For attorney's fees and costs incurred herein.
- 18 4. For such other and further relief as the Court may deem just and proper.

20 Respectfully submitted,

21 Dated: December 14, 2018

LAW OFFICES OF DIANE WEIFENBACH

22 By: /s/ Diane Weifenbach
23 DIANE V. WEIFENBACH, Attorneys for
24 Creditor U.S. BANK, NATIONAL
25 ASSOCIATION AS LEGAL TITLE
26 TRUSTEE FOR TRUMAN 2016 SC6 TITLE
27 TRUST
28